No. 17-1351

In the

United States Court of Appeals

for the

Fourth Circuit

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.,

Plaintiffs-Appellees,

– v. –

DONALD J. TRUMP, et al.,

Defendants-Appellants.

On Appeal from an Order of the United States
District Court for the District of Maryland

BRIEF OF TECHNOLOGY COMPANIES AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

Andrew J. Pincus
Paul W. Hughes
MAYER BROWN LLP
1999 K Street N.W.
Washington, D.C. 20006
(202) 263-3000

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENTS

Amici curiae submit their corporate disclosure statements, as required by Fed. R. App. P. 26.1 and 29(c), in Appendix B.

/s/ Andrew J. Pincus

TABLE OF CONTENTS

Corporate Disclosure Statements i
Table of Authorities iii
Interest of *Amici Curiae* 1
Argument 1
I. American Innovation And Economic Growth Are Intimately Tied To Immigration 5
II. The Executive Order Harms The Competitiveness Of U.S. Companies. 10
III. The Second Executive Order Is Unlawful. 15
A. The Order Discriminates On The Basis Of Nationality In Violation Of Section 1152. 15
B. Sections 1182(f) And 1185(a) Do Not Authorize Discrimination Based On Nationality Or Use Of Executive Orders To Fundamentally—And Permanently—Override The Nation's Immigration Statutes. 17
C. This Court Can, And Must, Determine Whether The President Has Exceeded His Statutory Authority. 26
Conclusion 28
Appendix A 1a
Appendix B 9a

TABLE OF AUTHORITIES

Cases

Abourezk v. Reagan,
785 F.2d 1043 (D.C. Cir. 1986) 23, 28

Bowen v. Mich. Acad. of Family Physicians,
476 U.S. 667 (1986)...26

Chamber of Commerce v. Reich,
74 F.3d 1322 (D.C. Cir. 1996) 19

Dalton v. Specter,
511 U.S. 462 (1994)...25, 27

Dames & Moore v. Regan,
453 U.S. 654 (1981)...27

Foley v. Connelie,
435 U.S. 291 (1978)...1

Franklin v. Massachusetts,
505 U.S. 788 (1992)...27

Kerry v. Din,
135 S. Ct. 2128 (2015) 21

Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State,
45 F.3d 469 (D.C. Cir. 1995) 16

Mojica v. Reno,
970 F. Supp. 130 (E.D.N.Y. 1997)..9

Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983)...25

Olsen v. Albright,
990 F. Supp. 31 (D.D.C. 1997) 20, 21

Perales v. Casillas,
903 F.2d 1043 (5th Cir. 1990) 27

Saavedra Bruno v. Albright,
197 F.3d 1153 (D.C. Cir. 1999) 28

Sale v. Haitian Ctrs. Council, Inc.,
509 U.S. 155 (1993) 27, 28

Sarsour v. Trump,
2017 WL 1113305 (E.D. Va. Mar. 24, 2017) 21

Texas v. United States,
787 F.3d 733 (5th Cir. 2015) 27

Texas v. United States,
809 F.3d 134 (5th. Cir. 2015) 26

United States v. Mead Corp.,
533 U.S. 218 (2001) 25

United States v. Witkovich,
353 U.S. 194 (1957) 19

Vayeghan v. Kelly,
2017 WL 396531 (C.D. Cal. Jan. 29, 2017) 17

Whitman v. Am. Trucking Ass'ns,
531 U.S. 457 (2001) 19

Xie v. Kerry,
780 F.3d 405 (D.C. Cir. 2015) 17

Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952) 27

Zemel v. Rusk,
381 U.S. 1 (1965) 19

Statutes, Rules, and Regulations

5 U.S.C.
§ 553(b) 18
§ 553(c) 18, 25

8 U.S.C.
§ 1152(a)(1)(A) 16
§ 1152(a)(1)(B) 17
§ 1182(a)(3)(B) 21
§ 1182(a)(3)(B)(i)(II) 21
§ 1182(f) .... *passim*
§ 1185(a) 18, 19, 20, 25

Fed. R. App. 29(a)(4)(E) 1

Miscellaneous

Americas Soc'y & Council of the Americas, *Bringing Vitality to Main Street* (2015), https://goo.gl/i9NWc9 6

Stuart Anderson, *Immigrants Flooding America with Nobel Prizes*, Forbes (Oct. 16, 2016), http://goo.gl/RILwXU 7

Stuart Anderson, Nat'l Found. for Am. Pol'y, *The Contributions of the Children of Immigrants to Science in America* (2017), https://goo.gl/7noMyC 8

BGRS, *Breakthrough to the Future of Global Talent Mobility* (2016), http://goo.gl/ZhIxSr 13

Maksim Belenkiy & David Riker, *Face-to-Face Exports: The Role of Business Travel in Trade Promotion*, 51 J. Travel Res. 632 (2012) 13

Muzaffar Chishti & Claire Bergeron, *Post-9/11 Policies Dramatically Alter the U.S. Immigration Landscape*, Migration Pol'y Inst. (Sept. 8, 2011), https://goo.gl/6rdagt 3

Jeff Daniels, *Trump Immigration Ban Puts $20 Billion in Boeing Aircraft Sales to Iran, Iraq at Risk*, CNBC (Jan. 30, 2017), https://goo.gl/uT2goG 14

Jordan Fabian, *DHS Analysis Found No Evidence of Extra Threat Posed by Travel-Ban Nations: Report*, The Hill (Feb. 24, 2017), https://goo.gl/6jp7FX 22

Seth Fiegerman, *Former Google Exec Calls Trump Travel Ban an 'Enormous Problem,'* CNN Tech (Jan. 30, 2017), https://goo.gl/vNVgLt 12

Gallup, *Majority of Americans Identify Themselves as Third Generation Americans* (July 10, 2001), https://goo.gl/o7PRxv 1

Michael Greenstone & Adam Looney, The Hamilton Project, *Ten Economic Facts About Immigration* (Sept. 2010), https://goo.gl/3zpdpn........ 7

Elizabeth Grieco, U.S. Census Bureau, *The Foreign-Born Population in the United States* (2012), https://goo.gl/PZ3pnE 1

Harv. Bus. Rev., *Strategic Global Mobility* (2014), http://goo.gl/AV3nhJ 13

H.R. Rep. No. 89-745 (1965)........ 17

Nune Hovhannisyan & Wolfgang Keller, *International Business Travel: An Engine of Innovation?*, 20 J. Econ. Growth 75 (2015)........ 13

Brady Huggett, *US Immigration Order Strikes Against Biotech*, Trade Secrets (Feb. 7, 2017), https://goo.gl/OLHfNl 12

Immigration Laws and Iranian Students, 4A Op. O.L.C. 133 (1979) 19

Lyndon B. Johnson, Remarks at the Signing of the Immigration Bill (Oct. 3, 1965)........ 10

John F. Kennedy, A Nation of Immigrants (1958)........ 2

Letter from Bradford L. Smith, President and Chief Legal Officer, Microsoft, to John F. Kelly, Sec'y of Homeland Sec., and Rex W. Tillerson, Sec'y of State (Feb. 2, 2017), https://goo.gl/AZtcFV 11

Kate M. Manuel, Cong. Research Serv., *Executive Authority to Exclude Aliens: In Brief* (Jan. 23, 2017), https://goo.gl/D0bRkS 24

Laura Meckler, *Trump Administration Considers Far-Reaching Steps for 'Extreme Vetting,'* Wall St. J. (Apr. 4, 2017), https://goo.gl/D3H1tF 15

New American Economy, *Reason for Reform* (Oct. 2016), https://goo.gl/QRd8Vb 7

Pia Orrenius, George W. Bush Inst., *Benefits of Immigration Outweigh the Costs*, The Catalyst (2016), https://goo.gl/qC9uOc 7

Tara Palmeri & Bryan Bender, *U.S. Diplomats Warning GE's Major Deals in Iraq at Risk over Travel Ban*, Politico (Feb. 1, 2017), http://goo.gl/nhj9CZ 14

Partnership for a New American Economy, *Open For Business: How Immigrants Are Driving Small Business Creation in the United States*, Aug. 2012, https://goo.gl/zqwpVQ. 6

Partnership for a New American Economy, *The "New American" Fortune 500* (2011), http://goo.gl/yc0h7u 6

Pew Research Center, *Second-Generation Americans: A Portrait of the Adult Children of Immigrants* (Feb. 7, 2013), https://goo.gl/SRaXxc 1

Gopal Ratnam, *Trump's Travel Order Opens Door to Targeting More Countries*, Roll Call (Mar. 15, 2017), https://goo.gl/6bFYHm 11

Remarks at the Opening Ceremonies of the Statute of Liberty Centennial Celebration (July 3, 1986), https://goo.gl/1qwq5N 2

S. Rep. No. 89-748 (1965) 16

Jonathan Shieber, *Apple CEO Tim Cook Sent an Email to Employees about the Immigration Ban*, TechCrunch (Jan. 28, 2017), https://goo.gl/qzXDJO 11

U.S. Chamber of Commerce, *Immigration: Myths and Facts* (2016), https://goo.gl/NizPEQ 7

U.S. Dep't of State, Office of the Historian, *The Immigration Act of 1924 (The Johnson-Reed Act)*, https://goo.gl/5foFNZ 9

Vivek Wadhwa et al., *America's New Immigrant Entrepreneurs* (Jan. 4, 2007), https://goo.gl/wCIySz 7

5 Woodrow Wilson, A History of the American People (1902). 8

INTEREST OF *AMICI CURIAE*

Amici curiae are 162 leading technology companies. A list of *amici* is set forth in Appendix A.[1]

ARGUMENT

America proudly describes itself as "a nation of immigrants." *Foley v. Connelie*, 435 U.S. 291, 294 (1978). We are: in 1910, 14.7% of the population was foreign born; in 2010, 12.9%.[2] A quarter of us have at least one parent who was born outside the country.[3] Close to half of us have a grandparent born somewhere else.[4] Nearly all of us trace our lineage to another country.

President Reagan, rededicating the Statue of Liberty in 1986, said "which of us does not think of . . . grandfathers and grandmothers, from so many places around the globe, for whom this statue was the first glimpse of America? . . . A special kind of people from every corner of the world, who had a special love for freedom and a special courage that enabled them to leave their own land, leave their friends and their countrymen, and come to this new and strange land to build a New World of peace and freedom and hope."[5]

---

[1] Pursuant to Local Rule 27(a), counsel for *amici* certify that counsel for the other parties have consented to the filing of this brief. *Amici* state that no party's counsel authored this brief in whole or in part, and that no person other than *amici* or its counsel contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. 29(a)(4)(E).

[2] Elizabeth Grieco, U.S. Census Bureau, *The Foreign-Born Population in the United States* 3 (2012), https://goo.gl/PZ3pnE.

[3] Pew Research Center, *Second-Generation Americans: A Portrait of the Adult Children of Immigrants* 8 (Feb. 7, 2013), https://goo.gl/SRaXxc.

[4] Gallup, *Majority of Americans Identify Themselves as Third Generation Americans* (July 10, 2001), https://goo.gl/o7PRxv.

The "contributions of immigrants," then-Senator John F. Kennedy explained, "can be seen in every aspect of our national life." John F. Kennedy, A Nation of Immigrants 4 (1958). "We see it in religion, in politics, in business, in the arts, in education, even in athletics and in entertainment." *Id.* There is "no part of our nation," he recognized, "that has not been touched by our immigrant background." *Id.*

Immigrants make many of the Nation's greatest discoveries, and create some of the country's most innovative and iconic companies. Immigrants are among our leading entrepreneurs, politicians, artists, and philanthropists. The experience and energy of people who come to our country to seek a better life for themselves and their children—to pursue the "American Dream"—are woven throughout the social, political, and economic fabric of the Nation.

For decades, stable U.S. immigration policy has embodied the principles that we are a people descended from immigrants, that we welcome new immigrants, and that we provide a home for refugees seeking protection. At the same time, America has long recognized the importance of protecting ourselves against those who would do us harm. But it has done so while maintaining our fundamental commitment to welcoming immigrants—through increased background checks and other controls on people seeking to enter our country.[6]

---

[5] Remarks at the Opening Ceremonies of the Statute of Liberty Centennial Celebration (July 3, 1986), https://goo.gl/1qwq5N.

On January 27, 2017, President Donald J. Trump signed Executive Order 13769. *See* 82 Fed. Reg. 8977 (2017) ("First Executive Order"). The First Executive Order altered immigration policy in significant respects: it barred nationals of seven countries—Syria, Libya, Iran, Iraq, Somalia, Yemen, and Sudan—from entering the United States for at least 90 days (First Executive Order § 3(c)), with the possibility of expansion to additional countries (*id.* § 3(e)-(f)); it gave the Secretaries of State and Homeland Security discretion to issue visas to affected nationals "on a case-by-case basis" (*id.* § 3(g)); and it suspended the Refugee Admissions Program for at least 120 days (*id.* § 5(a)). The First Executive Order was enjoined by courts across the country, on the basis of a number of constitutional and statutory defects.

On March 6, 2017, President Trump rescinded the First Executive Order and issued Executive Order 13780. *See* 82 Fed. Reg. 13209 (2017) ("Second Executive Order" or "Order"). The new Order bans nationals from six countries for 90 days beginning on March 16, omitting Iraq, but subjects nationals from Iraq to especially intensive scrutiny. Second Executive Order §§ 2(c), 4.

---

[6] "In the decade since 9/11," immigration policy has incorporated, among other things, "major new border security and law enforcement initiatives, heightened visa controls and screening of international travelers and would-be immigrants, the collection and storage of information in vast new interoperable databases used by law enforcement and intelligence agencies, and the use of state and local law enforcement as force multipliers in immigration enforcement." Muzaffar Chishti & Claire Bergeron, *Post-9/11 Policies Dramatically Alter the U.S. Immigration Landscape*, Migration Pol'y Inst. (Sept. 8, 2011), https://goo.gl/6rdagt.

The Order's ban may be extended beyond 90 days and expanded to new countries deemed, based on unspecified criteria, not to provide sufficient information to the United States. *Id.* § 2(e)-(f). Any waiver from the ban remains subject to the largely unconstrained discretion of U.S. Customs and Border Protection. *Id.* § 3(c). And the Order suspends the Refugee Admissions Program for 120 days. *Id.* § 6.

Like the First Executive Order, the Second Order effects a fundamental shift in the rules governing entry into the United States, and is inflicting substantial harm on U.S. companies, their employees, and the entire economy. It hinders the ability of American companies to attract talented employees; increases costs imposed on business; makes it more difficult for American firms to compete in the international marketplace; and gives global enterprises a new, significant incentive to build operations—and hire new employees—outside the United States.

The District Court rested its decision enjoining the entire Second Order on a finding of religious discrimination. *Amici* explain that the Order is unlawful for the additional reason that it exceeds the President's authority under the immigration laws.

Congress in 1965 prohibited discrimination in immigration decisions on the basis of national origin precisely so that the Nation could not shut its doors to immigrants based on where they come from—but the Order does just that. Moreover, the President's authority under the immigration laws must be exercised reasonably, and is limited by the detailed standards enacted by Congress to address a variety of issues, including preventing entry of terrorists into our country. The Order overrides those standards without sufficient justification. Finally, the President lacks authority to impose sweeping, long-term changes on the entire system governing eligibility for entry into the United States by immigrants and non-immigrants; such changes require notice-and-comment procedures conducted by one or all of the Secretary of State, the Attorney General, and the Secretary of Homeland Security.

I. AMERICAN INNOVATION AND ECONOMIC GROWTH ARE INTIMATELY TIED TO IMMIGRATION.

The tremendous impact of immigrants on America—and on American business and the entire American economy—is not happenstance. People who choose to leave everything that is familiar and journey to an unknown land to make a new life necessarily are endowed with drive, creativity, determination—and just plain guts. The energy they bring to America is a key reason why the American economy has been the greatest engine of prosperity and innovation in history.

Immigrants are leading entrepreneurs. "The American economy stands apart because, more than any other place on earth, talented people from around the globe want to come here to start their businesses." Partnership for a New American Economy, *The "New American" Fortune 500*, at 5 (2011), http://goo.gl/yc0h7u.

Some of these businesses are large. Immigrants or their children founded more than 200 of the companies on the Fortune 500 list, including Apple, Kraft, Ford, General Electric, AT&T, Google, McDonald's, Boeing, and Disney. *Id.* at 1-2. Collectively, these companies generate annual revenue of $4.2 *trillion*, and employ millions of Americans. *Id.* at 2.

Many of these businesses are small. "While accounting for 16 percent of the labor force nationally and 18 percent of business owners, immigrants make up 28 percent of Main Street business owners." Americas Soc'y & Council of the Americas, *Bringing Vitality to Main Street* 2 (2015), https://goo.gl/i9NWc9. These are "the shops and services that are the backbone of neighborhoods around the country." *Id.* In 2011, immigrants opened 28% of all new businesses in the United States. *See* Partnership for a New American Economy, *Open For Business: How Immigrants Are Driving Small Business Creation in the United States* 3, Aug. 2012, https://goo.gl/zqwpVQ.

Immigrant-entrepreneurs come from all parts of the world. In 2014, "19.1 percent of immigrants from the Middle East and North Africa were entrepreneurs." New American Economy, *Reason for Reform* 2 (Oct. 2016), https://goo.gl/QRd8Vb.

Immigrants also fuel the growth of the economy as a whole. "When immigrants enter the labor force, they increase the productive capacity of the economy and raise GDP. Their incomes rise, but so do those of natives." Pia Orrenius, George W. Bush Inst., *Benefits of Immigration Outweigh the Costs*, The Catalyst (2016), https://goo.gl/qC9uOc. Immigrants thus create *new* jobs for U.S. citizens "through the businesses they establish . . . [and] play an important role in job creation in both small and large businesses." U.S. Chamber of Commerce, *Immigration: Myths and Facts* 3 (2016), https://goo.gl/NizPEQ.

Immigrants are innovators. Since 2000, more than one-third of all American Nobel prize winners in Chemistry, Medicine, and Physics have been immigrants. *See* Stuart Anderson, *Immigrants Flooding America with Nobel Prizes*, Forbes (Oct. 16, 2016), http://goo.gl/RILwXU. Among individuals with advanced educational degrees, immigrants are nearly three times more likely to file patents than U.S.-born citizens. Michael Greenstone & Adam Looney, The Hamilton Project, *Ten Economic Facts About Immigration* 11 (Sept. 2010), https://goo.gl/3zpdpn. By one estimate, non-citizen immigrants were named on almost a quarter of all U.S.-based international patent applications filed in 2006. Vivek Wadhwa et al., *America's New Immigrant Entrepreneurs* 4 (Jan. 4, 2007), https://goo.gl/wCIySz. And children of immigrants made up 83% of the top performing students in the well-known Intel high-school science competition. Stuart Anderson, Nat'l Found. for Am. Pol'y, *The Contributions of the Children of Immigrants to Science in America* 1–3, 5, 12 (2017), https://goo.gl/7noMyC.

Inventions and discoveries by immigrants have profoundly changed our Nation. Some, like alternating current (Nikola Tesla), power our world. Others, like nuclear magnetic resonance (Isidore Rabi) and flame-retardant fiber (Giuliana Tesoro), save lives. And yet others, like basketball (James Naismith), blue jeans (Levi Strauss), and the hot dog (Charles Feltman), are integral to our national identity.

America's success in attracting and incorporating immigrants into our society is unrivaled in the world.

To be sure, America has in the past deviated from this ideal. Woodrow Wilson in 1902 decried the immigration to the United States of "multitudes of men of the lowest class from the south of Italy and men of the meaner sort out of Hungary and Poland, men out of the ranks, where there was neither skill nor energy nor any initiative of quick intelligence; and they came in numbers which increased from year to year, as if the countries of the south of Europe were disburdening themselves of the more sordid and hapless elements of their population." 5 Woodrow Wilson, A History of the American People 212-13 (1902).

The Immigration Act of 1917 (also known as the Literacy Act) barred immigration from parts of Asia. And in 1924, the Johnson-Reed Act significantly restricted Italian and Jewish immigration to the United States in an effort to "preserve the ideal of U.S. homogeneity." U.S. Dep't of State, Office of the Historian, *The Immigration Act of 1924 (The Johnson-Reed Act)*, https://goo.gl/5foFNZ; *see also Mojica v. Reno*, 970 F. Supp. 130, 145 (E.D.N.Y. 1997) (Weinstein, J.) ("It is well known that prejudice against the Irish, the Chinese, the Japanese, the Italians, the Jews, and the Mexicans and others emerged as these groups emigrated in substantial numbers.").

But the march of time has discredited these laws and policies. Since World War II, American immigration policy has been one of "tolerance, equality and openness" in which "the United States has revived its traditional rhetoric of welcome—and matched its words with action." *Id.*

In 1965, Congress enacted the Immigration and Nationality Act (INA). That law, which establishes the immigration framework that remains today, eliminated the policy of national quotas. In signing the INA, President Johnson stated:

> America was built by a nation of strangers. . . . And from this experience, almost unique in the history of nations, has come America's attitude toward the rest of the world. We, because of what we are, feel safer and stronger in a world as varied as the people who make it up—a world where no country rules another and all countries can deal with the basic problems of human dignity and deal with those problems in their own way.

Lyndon B. Johnson, Remarks at the Signing of the Immigration Bill (Oct. 3, 1965).

These principles have defined American immigration policy for the past 50 years. The beneficiaries are not just the new immigrants who chose to come to our shores, but American businesses, workers, and consumers, who gain immense advantages from immigrants' infusion of talents, energy, and opportunity.

II. THE EXECUTIVE ORDER HARMS THE COMPETITIVENESS OF U.S. COMPANIES.

Like the First Executive Order, the Second Order abandons the principles that have undergirded U.S. immigration policy for more than half a century—clear, settled standards and constrained discretion. The Order again introduces sudden changes without an opportunity for affected parties to inform decisionmakers of the consequences of those changes before their adoption, provides unclear standards for implementation, and leaves entirely to individual officers' discretion the exercise of case-specific waiver authority.

The Order will make it more difficult and expensive for U.S. companies to recruit, hire, and retain some of the world's best employees. It will disrupt ongoing business operations. And it will inhibit companies' ability to attract talent, business, and investment to the United States. That will inflict significant harm on American business, innovation, and economic growth.[7]

---

[7] Several major companies reported substantial disruptions from the First

1. The Second Executive Order establishes a system of "case-by-case" exceptions from its ban on nationals from six countries, but leaves the application of those exceptions to the discretion of Customs and Border Protection—setting forth a non-exhaustive list of circumstances in which such exceptions "*could be* appropriate." Second Executive Order § 3(c) (emphasis added). Because individual immigration officers retain broad discretion in issuing these individual-by-individual exceptions, it is unclear what exemptions will be actually be given, or why—and whether that authority is being exercised fairly and without discrimination or favoritism.

Even more important, the Order provides that the ban, and accompanying standardless exception process, may be expanded to include an unspecified number of additional countries if those nations do not provide information the Secretary of State deems necessary to approve visas—yet the Order does not specify *what* information those nations must supply. *See* Order § 2(e)-(f). The Department of Homeland Security purportedly "has already identified more than a *dozen* countries whose nationals could be blocked from traveling to the United States" on this basis.[8] Individuals and businesses

Executive Order. *E.g.*, Letter from Bradford L. Smith, President and Chief Legal Officer, Microsoft, to John F. Kelly, Sec'y of Homeland Sec., and Rex W. Tillerson, Sec'y of State, at 5 (Feb. 2, 2017), https://goo.gl/AZtcFV; Jonathan Shieber, *Apple CEO Tim Cook Sent an Email to Employees about the Immigration Ban*, TechCrunch (Jan. 28, 2017), https://goo.gl/qzXDJO.

[8] Gopal Ratnam, *Trump's Travel Order Opens Door to Targeting More Countries*, Roll Call (Mar. 15, 2017) (emphasis added), https://goo.gl/6bFYHm.

thus face the significant risk that new, as-yet unidentified countries will be added to the ban—all without any governing standard. And, given that the Second Executive Order expanded on the time period of the first, nothing prevents further extensions of the ban.

The Order will have the immediate, adverse consequence of making it far more difficult and expensive for U.S. companies to hire some of the world's best talent and impeding them from competing in the global marketplace. Businesses and employees have little incentive to go through the laborious process of sponsoring or obtaining a visa, and relocating to the United States, if an employee may be unexpectedly halted at the border. Skilled individuals will not wish to immigrate to this country if they may be cut off without warning from their spouses, grandparents, relatives, and friends—they will not pull up roots, incur significant economic risk, and subject their family to considerable uncertainty to immigrate to the United States in the face of this instability.[9] The Order therefore significantly disadvantages U.S. companies in the global competition for talent.[10]

2. The Order's bans on travel also will significantly impair day-to-day business. The marketplace for today's businesses is global. Companies routinely send employees across borders for conferences, meetings, or job rota-

---

[9] Seth Fiegerman, *Former Google Exec Calls Trump Travel Ban an 'Enormous Problem,'* CNN Tech (Jan. 30, 2017), https://goo.gl/vNVgLt.

[10] *See* Brady Huggett, *US Immigration Order Strikes Against Biotech*, Trade Secrets (Feb. 7, 2017), https://goo.gl/OLHfNl.

tions, and invite customers, clients, or users from abroad. Global mobility is critical to businesses whose customers, suppliers, users, and workforces are spread all around the world.[11]

Global business travel enables employees to develop new skills, take on expanded roles, and stay abreast of new technological or business developments. It also facilitates new markets and business partnerships. Indeed, one study has shown that each additional international business trip increases exports from the United States to the visited country by, on average, over $36,000 per year.[12]

But the Order will mean that many companies and employees (both inside and outside the United States) would be unable to take advantage of these opportunities. The Order will prevent companies from inviting customers to the U.S. and prevent employees from outside the U.S. from traveling here. That is true even for persons or countries not currently covered by the Order because there is no way to know whether or when a given country may be added to the no-entry list.

---

[11] *See, e.g.*, BGRS, *Breakthrough to the Future of Global Talent Mobility* (2016), http://goo.gl/ZhIxSr; Harv. Bus. Rev., *Strategic Global Mobility* (2014), http://goo.gl/AV3nhJ.

[12] Maksim Belenkiy & David Riker, *Face-to-Face Exports: The Role of Business Travel in Trade Promotion*, 51 J. Travel Res. 632, 637 (2012); *see also* Nune Hovhannisyan & Wolfgang Keller, *International Business Travel: An Engine of Innovation?*, 20 J. Econ. Growth 75 (2015).

The Order also could lead to retaliatory actions by other countries, which would seriously hinder U.S. companies' ability to do business or negotiate business deals abroad. U.S. companies' deals have already been threatened.[13]

3. The same authority invoked to justify the Order may be used in the future to impose additional measures that will harm U.S. businesses. For example, once the 90-day suspension period has ended, foreign travelers could be required "to disclose contacts on their mobile phones, social-media passwords and financial records, and to answer probing questions about their ideology."[14] Such requirements would powerfully discourage travel to the United States, and risk exposing to third parties sensitive business information of U.S. companies contained on travelers' devices.

4. For all of these reasons, the Order will incentivize both immigration to and investment in foreign countries rather than the United States. Highly skilled immigrants will be more interested in working elsewhere, in places where they and their colleagues can travel freely and with assurance that their immigration status will not suddenly be revoked. Multinational compa-

---

[13] *See, e.g.*, Jeff Daniels, *Trump Immigration Ban Puts $20 Billion in Boeing Aircraft Sales to Iran, Iraq at Risk*, CNBC (Jan. 30, 2017), https://goo.gl/uT2goG; Tara Palmeri & Bryan Bender, *U.S. Diplomats Warning GE's Major Deals in Iraq at Risk over Travel Ban*, Politico (Feb. 1, 2017), http://goo.gl/nhj9CZ.

[14] Laura Meckler, *Trump Administration Considers Far-Reaching Steps for 'Extreme Vetting,'* Wall St. J. (Apr. 4, 2017), https://goo.gl/D3H1tF.

nies will have strong incentives, including from their own employees, to base operations outside the United States or to move or hire employees and make investments abroad. Foreign companies will have significantly less incentive to establish operations in the United States and hire American citizens, because the Order will preclude the ability of those companies to employ their world-class talent within their U.S. subsidiaries. Ultimately, American workers and the economy will suffer as a result.

Of course, the federal government can and should implement targeted, appropriate adjustments to our country's immigration system to enhance the Nation's security. But a broad, open-ended ban—together with the indication that the ban could be expanded to other countries without notice—will undermine rather than protect American interests, producing serious, widespread adverse consequences without any reasonable relationship to the goal of making the country more secure.

III. THE SECOND EXECUTIVE ORDER IS UNLAWFUL.

Nondiscrimination, rational decisionmaking, and predictability are core principles of immigration law specifically and of U.S. law generally. The Second Executive Order violates these fundamental legal norms.

A. The Order Discriminates On The Basis Of Nationality In Violation Of Section 1152.

The immigration laws confer on the executive branch significant authority to control the admission of immigrants to the United States, but that authority is subject to an overarching prohibition, codified in 8 U.S.C. § 1152(a)(1)(A), that "no person shall . . . be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." "Congress could hardly have chosen more explicit language" to "unambiguously direct[] that no nationality-based discrimination" shall occur with respect to immigration. *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State*, 45 F.3d 469, 473 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996).

Congress enacted Section 1152 "expressly to abolish the 'national origins system' imposed by the Immigration Act of 1924," a system that, as President Johnson explained, "was at odds with 'our basic American tradition' that we 'ask not where a person comes from but what are his personal qualities.'" *Int'l Refugee Assistance Project v. Trump*, __ F. Supp. 3d __, 2017 WL 1018235, at *8 (D. Md. Mar. 16, 2017) ("*IRAP*") (quoting H.R. Rep. No. 89-745, at 11 (1965)). It replaced the national origins system with "a new system of selection designed to be fair, rational, humane, and in the national interest" (S. Rep. No. 89-748, at 13 (1965)), based largely on "the advantage to the United States of the special talents and skills of the immigrant." H.R. Rep. No. 89-745, at 18.

The Second Executive Order on its face discriminates on the basis of nationality and therefore violates Section 1152. Although the Order purports to bar only the entry of designated foreign nationals, "it would have the specific effect of halting the issuance of visas to nationals of the Designated Countries." *IRAP*, 2017 WL 1018235, at *9. That is precisely what Section 1152 prohibits. *Id.*; *accord Vayeghan v. Kelly*, 2017 WL 396531, at *1 (C.D. Cal. Jan. 29, 2017).

The Order cannot be defended as creating "procedures for the processing of immigrant visa applications" (8 U.S.C. § 1152(a)(1)(B)). *Cf.* Gov. Br. 29-30. That provision, by its terms, confers power upon the Secretary of State, not the President. And the Secretary must exercise that authority in conformity with the provisions of the Administration Procedure Act ("APA"), including providing notice and opportunity for comment by interested parties. 5 U.S.C. § 553(b)-(c); *cf. Xie v. Kerry*, 780 F.3d 405 (D.C. Cir. 2015) (applying the APA to the Secretary of State's visa processing).

More importantly, the Secretary's authority is subject to Section 1152's prohibition on discrimination. It therefore—at most—permits the executive branch to regulate the manner in which foreign nationals can receive visas or enter the United States, but does not authorize a sweeping ban on nationals from six countries.

B. Sections 1182(f) And 1185(a) Do Not Authorize Discrimination Based On Nationality Or Use Of Executive Orders To Fundamentally—And Permanently—Override The Nation's Immigration Statutes.

The government relies primarily on the President's power under the INA to "suspend the entry of . . . any class of aliens" whose entry he finds "would be detrimental to the interests of the United States." 8 U.S.C. § 1182(f). It also points to Section 1185(a), which permits the President to issue "reasonable rules, regulations, and orders" and "limitations and exceptions" for the entry of immigrants and non-immigrants. Those grants of authority, the government claims, permit the President to override the prohibition against nationality-based discrimination—and, presumably, every other section of the immigration law governing the issuance of visas and the entry of aliens.

But these statutory provisions do not confer unlimited authority. The text and context of Sections 1182(f) and 1185(a) both make clear that an exercise of authority must be reasonable and must be limited to a specific, emergency situation.

The Order exceeds the President's authority. *First*, it is substantively unreasonable in overriding the statutory provisions barring discrimination on the basis of nationality and establishing standards for preventing entry by terrorists without any reasonable justification for displacing those congressionally-enacted standards. *Second*, the Order is the polar opposite of a targeted response to an emergency situation. In sixty-five years, no President has ever invoked Sections 1182(f) and 1185(a) to bar the admission into the United States of tens of millions of people, based solely on their nationality, for months—and perhaps years. *Third*, the Order's broad changes to immigration procedures can only be imposed through the rulemaking process.

1. Actions under Sections 1182(f) and 1185(a) must be reasonable. Congress may not delegate unbounded authority to the President. It must provide "an intelligible principle" to guide the exercise of delegated power. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001).

For that reason, the Supreme Court consistently identifies limits on the discretionary authority that Congress has delegated, even when confronted with a clause that seems "limitless" when read "in isolation and literally." *United States v. Witkovich*, 353 U.S. 194, 198-202 (1957); *see Zemel v. Rusk*, 381 U.S. 1, 8, 18 (1965) (holding that the President's unqualified statutory authority to "designate and prescribe" rules was "limited" to actions supported by "prior administrative practice"); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1330-31 (D.C. Cir. 1996).

Here, the President must act reasonably in exercising his Section 1182(f) authority. *Witkovich*, 353 U.S. at 198-202 (holding that authority to request information that the Attorney General "may deem fit and proper" had an implicit limit of reasonableness). Indeed, Section 1185(a)(1) permits only "*reasonable* rules, regulations, and orders" (emphasis added).

That conclusion accords with the longstanding interpretation of the statute by the Executive Branch. *Immigration Laws and Iranian Students*, 4A Op. O.L.C. 133, 140 (1979) (recognizing that any suspension the President makes under Section 1182(f) "must meet the test of 'reasonableness'").

2. The Order is substantively unreasonable. One obvious means of assessing reasonableness in the immigration context is the standards set forth in statutes enacted by Congress. A Section 1182(f) order (or Section 1185(a) order) that conflicts with statutory provisions addressing the same or similar issues bears a heavy burden—there must be evidence that particular facts make the congressional determination unreasonable, and the new executive rule reasonable, in the circumstances addressed by the order.

The Order here purports to override two provisions of the immigration laws. And there is no indication of a reasonable justification for displacing those standards.

To begin with, the Order conflicts with Section 1152's ban on nationality-based discrimination. Congress could not have intended to prohibit discrimination at the embassy, but permit it at the airport gate. Congress instead commanded "that government must not discriminate against particular individuals because of the color of their skin or the place of their birth," because such discrimination "is unfair and unjustified" wherever it occurs. *Olsen v. Albright*, 990 F. Supp. 31, 39 (D.D.C. 1997).

Indeed, the government recognizes that requiring issuance of a visa to one whom may be barred from entry "would make no sense." Gov. Br. 35; *see also id.* at 32-34 & n.12. The government would address that absurdity by effectively reading Section 1152 out of the INA, asserting that it may decline to issue visas to those barred from entry based on their national origin. But nationality-based discrimination one step removed is still nationality-based discrimination. The Order's ad hoc waiver process does nothing to erase that unreasonable baseline.[15]

The Order purports to displace a second provision of the immigration law—the INA's specific requirements for excluding aliens on the basis that they might commit acts of terrorism. *See* 8 U.S.C. § 1182(a)(3)(B). That provision makes exclusion permissible only if the decision "rest[s] on a determination that [the alien] d[oes] not satisfy the statute's requirements." *Kerry v. Din*, 135 S. Ct. 2128, 2140 (2015) (Kennedy, J., concurring). Those requirements, for aliens who have never before engaged in terrorist activities or joined a terrorist organization, include a "reasonable ground to believe" that the alien "is likely to engage after entry in any terrorist activity." 8 U.S.C. § 1182(a)(3)(B)(i)(II).

The Order's system of ad hoc waivers turns that provision on its head. Instead of creating a presumption of *admittance* absent any "reasonable ground" to think an alien will commit terrorist activities—as Section

---

[15] Section 1152 prohibits discrimination with respect to immigrant visas. But the basic non-discrimination principle that it embodies is reflected throughout U.S. law. *Olsen*, 990 F. Supp. at 33 (addressing non-immigrant visas). Section 1182(f) therefore does not confer authority to discriminate on this basis in the absence of a reasonable justification for displacing this fundamental principle. The conclusion of the court in *Sarsour v. Trump*, 2017 WL 1113305, at *8 (E.D. Va. Mar. 24, 2017), that the President's Section 1182(f) and 1185(a) authority is not limited by this principle does not address the analysis set forth above.

1182(a)(3)(B) requires—the Order creates a presumption of *exclusion* and leaves it to Customs and Border Protection to decide whether an alien has demonstrated, "to the officer's satisfaction," that he would not threaten national security. Second Executive Order § 3(c). It thus eliminates Congress's substantive requirement that there be reasonable grounds to exclude an alien on the basis of the threat of future acts of terrorism.

The Order provides no justification for displacing Congress's prohibition against nationality discrimination and Congress's standard for excluding aliens based on the risk of terrorist activity. Its express aim is to "protect the Nation from terrorist activities by foreign nationals." Order, pmbl. Yet the ban applies to literally *millions* of people who could not plausibly be foreign terrorists: hundreds of thousands of students, employees, and family members of citizens who have been previously admitted to the United States, and countless peaceful individuals who are citizens of or born in the targeted countries.

There are no reasonable grounds to conclude that nearly *every* national of Iran, Libya, Somalia, Sudan, Syria, and Yemen, absent specific evidence to the contrary, will commit terrorist activities upon entry to the United States. The text of the Order provides none: it simply recites well-known facts regarding these countries, ignoring that no alien from these countries admitted to the U.S. has engaged in terroristic activity. *See, e.g.,* Br. of Former Nat'l Sec. Officials as *Amici Curiae*, at 3-15; Jordan Fabian, *DHS Analysis Found*

No Evidence of Extra Threat Posed by Travel-Ban Nations: Report, The Hill (Feb. 24, 2017), https://goo.gl/6jp7FX. No other President has ever used Section 1182(f) to presumptively prohibit the entry of millions of foreign nationals solely on the basis of their nationality.

Section 1182(f) should not be interpreted to allow the President to rewrite at will Congress's detailed rules for when aliens may be excluded—set forth in detail in 1182(a)—at least in the absence of evidence supporting a reasoned conclusion that changed circumstances make Congress's determinations inapplicable and the executive's new standards reasonable. *See Abourezk v. Reagan*, 785 F.2d 1043, 1051 (D.C. Cir. 1986) ("[T]he statute lists thirty-three distinctly delineated categories that conspicuously provide standards to guide the Executive in its exercise of the exclusion power.").

3. The Order is unreasonable because of its broad scope and unlimited duration. Section 1182(f) is a gap-filler provision, authorizing the President to take targeted action to respond to an emergency situation. *Abourezk*, 785 F.2d at 1049 n.2 (explaining that Section 1182(f) "provides a safeguard against the danger posed by any particular case or class of cases that is not covered by one of the [inadmissibility] categories in [S]ection 1182(a)").

That is how past Presidents have employed this authority since 1952, each time issuing a targeted restriction, usually limited to dozens or hundreds of people on the ground that each affected person had engaged in culpable conduct, such as human trafficking, illegal entry, or corruption. *See* Kate M. Manuel, Cong. Research Serv., *Executive Authority to Exclude Aliens: In Brief* 6-10 (Jan. 23, 2017), https://goo.gl/D0bRkS. That consistent executive branch practice is powerful evidence of the limited reach of the provision, and it is consistent with the context of Section 1182(f)—as one provision in an extraordinarily detailed set of statutory rules, elaborated in administrative regulations, that govern the issuance of visas and entry of aliens.

The Order here deviates from this settled practice. It is broadly applicable—to millions of people; it lasts for at least 90 days, which extends past the time period specified in the initial order, and it may last much longer; and it targets people based on nationality, rather than on the basis of culpable conduct. For this reason as well, the Order is unreasonable and therefore unlawful.

4. The Order is procedurally unreasonable. The comprehensive revision of the immigration system effected by the Second Executive Order—and the executive orders that apparently will follow—improperly circumvents Congress's directive that significant changes in immigration rules be implemented through notice and comment rulemaking.

Section 2(a)-(f) of the Order effectively creates a new immigration system pursuant to which the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence determine what unspecified "information" countries must share with the United States in order to allow their nationals to enter this country. Then, these officials may recommend to the President an expansion or extension of the ban on entry to the United States.

In addition, the Order confers effectively unconstrained discretion on consular officers and customs officials to "decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended." Order § 3(c). Other than listing a series of non-exclusive considerations, the Order neither proscribes a procedural mechanism for this exercise of discretion, nor establishes substantive guideposts to govern the exercise of this broad discretion.

Congress in the INA expressly identified the need for rulemaking, authorizing the President to impose "reasonable rules, regulations, and orders." 8 U.S.C. § 1185(a). But no such rulemaking occurred here, notwithstanding the Order's broad applicability.

Moreover, while the APA does not generally apply to the President's actions (*see Dalton v. Specter*, 511 U.S. 462, 469 (1994)), it *does* apply to the subsequent conduct of the Departments of State and of Homeland Security, which must ultimately implement the Order.

Rulemaking "foster[s] . . . fairness and deliberation" (*United States v. Mead Corp.*, 533 U.S. 218, 230 (2001)), and gives "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." 5 U.S.C. § 553(c); *see also Motor Vehicle Mfrs. Assn.*

v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (rulemaking process ensures that an agency has not "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency").

Here, the notice-and-comment process is particularly important given the huge range of individuals and entities affected by these rules, such as families seeking to reunite, or even just to have the opportunity to visit one another; businesses wishing to interact with customers, enable employees to obtain experience at their home offices in the United States, or hire individuals with expertise not otherwise available; and cultural institutions planning performances by artists from outside the United States.

For these reasons, Section 1182(f) does not provide a means of circumventing the ordinary rulemaking process for promulgating legal principles of general applicability. *Cf. Texas v. United States*, 809 F.3d 134, 177 (5th. Cir. 2015) (requiring use of notice-and-comment rulemaking in immigration context), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016).

C. This Court Can, And Must, Determine Whether The President Has Exceeded His Statutory Authority.

"Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command." *Bowen v. Mich. Acad. of Family Physicians*, 476

U.S. 667, 681 (1986). For this reason, "[r]eview of the legality of Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President's directive." *Franklin v. Massachusetts*, 505 U.S. 788, 828 (1992) (Scalia, J., concurring) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)).

In *Dames & Moore v. Regan*, the Supreme Court addressed claims that President Reagan's executive order suspending certain claims against Iran exceeded the President's statutory powers, holding that the order fell within that authority. 453 U.S. 654, 666-67 (1981). Appellees here raise a similar claim, arguing that the Order exceeds the President's limited authority under Section 1182(f).

To be sure, there is a narrow exception to judicial review where a statute gives the President unlimited discretion to make a discrete and specific decision. *See Dalton*, 511 U.S. at 477. This rule reflects the general principle that review is unavailable when a statute is "drawn in such broad terms that in a given case there is *no* law to apply." *Texas v. United States*, 787 F.3d 733, 759 (5th Cir. 2015) (emphasis added) (quoting *Perales v. Casillas*, 903 F.2d 1043, 1047 (5th Cir. 1990)). But the President's discretion under Section 1182(f) is not unlimited, as in *Dalton*. Instead, the President's authority is constrained by the requirement that he act reasonably. *Accord Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 187-88 (1993) (assessing legality of President's exercise of Section 1182(f) authority).

In passing, the government suggests that principles of consular nonreviewability bar this Court from deciding this case. Gov. Br. 26-27. The government's position is meritless. For one, appellees are not challenging a typical, one-off visa denial of the sort that the doctrine addresses. *See Saavedra Bruno v. Albright*, 197 F.3d 1153, 1163 (D.C. Cir. 1999) (recognizing that claims raising statutory and constitutional challenges, as here, are reviewable). And second, courts have long decided challenges on the merits to the exclusion of aliens. *See, e.g.*, *Sale*, 509 U.S. at 187-88 (reaching the merits of a challenge to the President's exclusion of aliens under Section 1182(f)); *Abourezk*, 785 F.2d at 1050 (holding that exclusion of aliens under Section 1182(a) is reviewable).

CONCLUSION

The Court should affirm the district court's decision enjoining enforcement of the Order.

Respectfully submitted,

/s/ Andrew J. Pincus

Andrew J. Pincus
Paul W. Hughes
MAYER BROWN LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000
apincus@mayerbrown.com
phughes@mayerbrown.com

Counsel for Amici Curiae

Dated: April 19, 2017

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), undersigned counsel certifies that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 6,490 words, including footnotes and excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: April 19, 2017 /s/ *Andrew J. Pincus*

CERTIFICATE OF SERVICE

I hereby certify that that on April 19, 2017, I filed the foregoing Brief of Technology Companies and Other Businesses As *Amici Curiae* in Support of Appellees via the CM/ECF system and served the foregoing via the CM/ECF system on all counsel who are registered CM/ECF users.

Dated: April 19, 2017 /s/ *Andrew J. Pincus*

APPENDIX A

LIST OF *AMICI CURIAE*

1. 6sense
2. A Medium Corporation
3. Adobe Systems Incorporated
4. AdRoll, Inc.
5. Affirm, Inc.
6. Airbnb, Inc.
7. Akamai Technologies, Inc.
8. AltSchool, PBC
9. Amazon
10. Ampush LLC
11. Ancestry.com, LLC
12. Appboy, Inc.
13. AppDynamics, Inc.
14. AppNexus, Inc.
15. Asana, Inc.
16. Atlassian Corp Plc
17. Autodesk, Inc.
18. Automattic Inc.
19. Ayla Networks

20. Azavea Inc.
21. Bitly, Inc.
22. Box, Inc.
23. Brightcove Inc.
24. Brocade Communications Systems, Inc.
25. Bungie, Inc.
26. CareZone Inc.
27. Casper Sleep Inc.
28. Castlight Health
29. Cavium, Inc.
30. Checkr, Inc.
31. Chegg, Inc.
32. Chobani, LLC
33. Citrix Systems, Inc.
34. ClassPass Inc.
35. Cloudera, Inc.
36. Cloudflare, Inc.
37. Codecademy
38. Color Genomics, Inc.
39. Copia Institute
40. Credit Karma, Inc.

41. DocuSign, Inc.
42. DoorDash, Inc.
43. Dropbox, Inc.
44. eBay Inc.
45. Edmodo, Inc.
46. Electronic Arts Inc.
47. Engine Advocacy
48. EquityZen Inc.
49. Etsy Inc.
50. Eventbrite, Inc.
51. Evernote
52. Facebook, Inc.
53. Fastly, Inc.
54. Fitbit, Inc.
55. Flipboard, Inc.
56. Fuze, Inc.
57. General Assembly Space, Inc.
58. GitHub, Inc.
59. Glassdoor, Inc.
60. Google Inc.
61. GoPro, Inc.

62. Greenhouse Software, Inc.

63. Greenough Consulting Group

64. Gusto

65. Harmonic Inc.

66. Hewlett Packard Enterprise

67. Hipmunk, Inc.

68. IDEO

69. Imgur, Inc.

70. Indiegogo, Inc.

71. Intel Corporation

72. Kargo

73. Kickstarter, PBC

74. Knotel, Inc.

75. Lam Research Corp.

76. Light Labs Inc.

77. Linden Research, Inc.

78. LinkedIn Corporation

79. Lithium Technologies, Inc.

80. Lyft, Inc.

81. Lytro, Inc.

82. Managed By Q

83. Mapbox, Inc.

84. Maplebear Inc. d/b/a Instacart

85. Marin Software Inc.

86. Medallia, Inc.

87. Medidata Solutions, Inc.

88. Meetup, Inc.

89. Memebox Corporation

90. Microsoft Corporation

91. Minted

92. Molecule Software, Inc.

93. MongoDB, Inc.

94. Motivate International Inc.

95. Mozilla

96. MPOWERD Inc.

97. NetApp, Inc.

98. Netflix, Inc.

99. NETGEAR

100. New Relic, Inc.

101. Nextdoor.com, Inc.

102. NIO

103. NY Tech Alliance

104. Optimizely, Inc.

105. Patreon, Inc.

106. PayPal Holdings, Inc.

107. Pinterest, Inc.

108. Pixability, Inc.

109. Postmates Inc.

110. Quantcast Corp.

111. Quora, Inc.

112. RealNetworks, Inc.

113. Red Hat, Inc.

114. Reddit, Inc.

115. Redfin Corp.

116. Rocket Fuel Inc.

117. RPX Corporation

118. SaaStr Inc.

119. Salesforce.com, Inc.

120. Shift Technologies, Inc.

121. Shutterstock, Inc.

122. Sift Science, Inc.

123. Sindeo

124. Snap Inc.

125. SpaceX

126. Spokeo, Inc.

127. SpotHero, Inc.

128. Spotify USA Inc.

129. Square, Inc.

130. Strava, Inc.

131. Stripe, Inc.

132. SugarCRM

133. Sunrun, Inc.

134. SurveyMonkey Inc.

135. TaskRabbit, Inc.

136. Tech:NYC

137. Tesla, Inc.

138. Thumbtack, Inc.

139. TransferWise Inc.

140. TripAdvisor, Inc.

141. Tumblr, Inc.

142. Turbonomic, Inc.

143. Turn Inc.

144. Turo, Inc.

145. Twilio Inc.

146. Twitter Inc.

147. Uber Technologies, Inc.

148. Udacity, Inc.

149. Udemy, Inc.

150. Upwork Inc.

151. Via

152. Warby Parker

153. Wikimedia Foundation, Inc.

154. Work & Co.

155. Workday, Inc.

156. Y Combinator Management, LLC

157. Yahoo! Inc.

158. Yelp Inc.

159. Yext

160. Zendesk, Inc.

161. Zymergen Inc.

162. Zynga Inc.

APPENDIX B

CORPORATE DISCLOSURE FOR *AMICI CURIAE*

1. 6Sense Insights, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

2. A Medium Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

3. Adobe Systems Incorporated has no parent corporation and no publicly held corporation owns 10% or more of its stock.

4. AdRoll, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

5. Affirm, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

6. Airbnb, Inc. has no parent corporation and no publicly held corporation owns 10% or more of Airbnb's stock.

7. Akamai Technologies, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

8. AltSchool, PBC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

9. Amazon.com, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

10. Ampush LLC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

11. Ancestry.com, LLC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

12. Appboy, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

13. AppDynamics, Inc. is a wholly owned subsidiary of Cisco Systems, Inc. Cisco Systems, Inc. does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

14. AppNexus Inc. has no parent corporation and the following publicly held corporations own 10% or more of its stock: Microsoft Corporation and WPP Luxembourg Gamma Three S.à r.l.

15. Asana, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

16. Atlassian Corp. Plc has no parent corporation and no publicly held corporation owns 10% or more of its stock

17. Autodesk, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

18. Automattic Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

19. Ayla Networks, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

20. Azavea Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

21. Bitly, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

22. Box, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

23. Brightcove Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

24. Brocade Communications Systems, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

25. Bungie, Inc. has no parent corporation and the following publicly held corporation owns 10% or more of its stock: Microsoft Corporation.

26. CareZone Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

27. Casper Sleep Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

28. Castlight Health has no parent corporation and no publicly held corporation owns 10% or more of its stock.

29. Cavium, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

30. Checkr, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

31. Chegg, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

32. Chobani Global Holdings, LLC is the sole member of Chobani, LLC and no publicly held corporation owns 10% or more of the membership interest in either entity.

33. Citrix Systems, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

34. ClassPass Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

35. Cloudera, Inc. has no parent corporation and the following publicly held corporation own 10% or more of its stock: Intel Corporation.

36. Cloudflare, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

37. Color Genomics, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

38. Copia Institute has no parent corporation and no publicly held corporation owns 10% or more of its stock.

39. Credit Karma, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

40. DocuSign, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

41. DoorDash has no parent corporation and no publicly held corporation owns 10% or more of its stock.

42. Dropbox, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

43. eBay Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

44. Edmodo, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

45. Electronic Arts Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

46. Engine Advocacy has no parent corporation and no publicly held corporation owns 10% or more of its stock.

47. EquityZen Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

48. Etsy Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

49. Eventbrite Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

50. Evernote Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

51. Facebook, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

52. Fastly, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

53. Fitbit, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

54. Flipboard, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

55. Fuze, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

56. General Assembly Space, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

57. GitHub, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

58. Glassdoor, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

59. Google Inc. is a wholly owned subsidiary of Alphabet Inc. Alphabet Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

60. GoPro, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

61. Greenhouse Software, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

62. Greenough Consulting Group has no parent corporation and no publicly held corporation owns 10% or more of its stock.

63. Harmonic Inc. has no parent corporation and the following publicly held corporations own 10% or more of its stock: investment funds affiliated with BlackRock hold more than 10% of Harmonic common stock; investment funds affiliated with T Rowe Price hold more than 10% of Harmonic common stock.

64. Hewlett Packard Enterprise has no parent corporation and no publicly held corporation owns 10% or more of its stock.

65. Hipmunk's parent corporation is Concur (a division of SAP), and the following publicly held corporation owns 10% or more of its stock: SAP.

66. IDEO has no parent corporation and the following publicly held corporation owns 10% or more of its stock: Steelcase, Inc.

67. Imgur, Inc. is a privately-held Delaware corporation. No public corporation owns 10% or more of its stock.

68. Indiegogo, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

69. Intel Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

70. JAND, Inc. d/b/a Warby Parker has no parent corporation and no publicly held corporation owns 10% or more of its stock.

71. Kargo Global, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

72. Kickstarter, PBC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

73. Knotel has no parent corporation and no publicly held corporation owns 10% or more of its stock.

74. Lam Research Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

75. Light Labs Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

76. Linden Research, Inc. d/b/a Linden Lab has no parent corporation and no publicly held corporation owns 10% or more of its stock.

77. LinkedIn Corporation's parent corporation is Microsoft Corporation, and the following publicly held corporation owns 10% or more of its stock: Microsoft Corporation.

78. Lithium Technologies, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

79. Lyft, Inc. has no parent corporation and the following publicly held corporation own 10% or more of its stock: Rakuten, Inc., a publicly held corporation traded on the Tokyo Stock Exchange, and General Motors Company, a publicly held corporation traded on the New York Stock Exchange, each own more than ten percent of Lyft's outstanding stock, in each case through a subsidiary.

80. Lytro, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

81. Managed By Q Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

82. Mapbox, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

83. Maplebear Inc. d/b/a Instacart has no parent corporation and no publicly held corporation owns 10% or more of its stock.

84. Marin Software Incorporated has no parent corporation and no publicly held corporation owns 10% or more of its stock.

85. Medallia, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

86. Medidata Solutions, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

87. Meetup, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

88. Memebox Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

89. Microsoft Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

90. Minted, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

91. Molecule Software, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

92. MongoDB, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

93. Motivate International Inc.'s parent corporation is Bikeshare Holdings, LLC and no publicly held corporation owns 10% or more of its stock.

94. Mozilla Corporation's parent corporation is Mozilla Foundation and no publicly held corporation owns 10% or more of its stock.

95. MPOWERD Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

96. NetApp, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

97. Netflix, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

98. NETGEAR, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

99. New Relic, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

100. Nextdoor.com, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

101. NEXTEV USA, INC. d/b/a NIO is a wholly-owned subsidiary of Nextev Limited, a Hong Kong company, which is a wholly-owned subsidiary of Nextev Inc., a Cayman company.

102. NY Tech Alliance has no parent corporation and no publicly held corporation owns 10% or more of its stock.

103. Optimizely, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

104. Patreon, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

105. PayPal Holdings, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

106. Pinterest, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

107. Pixability, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

108. Postmates Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

109. Quantcast Corp. has no parent company and no publicly held corporation owns 10% or more of its stock.

110. Quora, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

111. RealNetworks, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

112. Red Hat, Inc. has no parent corporation, and more than 10% of its Common Stock is held by T. Rowe Price Associates, Inc. (a subsidiary of publicly held corporation T. Rowe Price Group, Inc.).

113. Reddit, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

114. Redfin Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

115. Rocket Fuel Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

116. Ryzac, Inc. d/b/a Codecademy has no parent corporation and Naspers, Ltd., a publicly held corporation, indirectly owns 10% or more of its stock.

117. RPX Corporation has no parent corporation and no publicly held corporation owns 10% or more of its stock.

118. SaaStr Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

119. Salesforce.com, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

120. Shift Technologies, Inc. d/b/a Shift has no parent corporation and the following publicly held corporation owns 10% or more of its stock: investment funds affiliated with Goldman Sachs Group Inc.

121. Shutterstock, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

122. Sift Science, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

123. Sindeo has no parent corporation and no publicly held corporation owns 10% or more of its stock.

124. Snap Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

125. Space Exploration Technologies Corp. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

126. Spokeo, Inc. has no parent corporation and there are no publicly-held corporations that own 10% or more of Spokeo, Inc.'s stock.

127. SpotHero, Inc. has no parent company and no publicly held corporation owns 10% or more of its stock.

128. Spotify USA Inc. is a wholly-owned subsidiary of Spotify AB, a company organized under the laws of Sweden. Spotify AB is a wholly-owned subsidiary of Spotify Technology S.A., a company organized under the laws of the Grand Duchy of Luxembourg. Spotify Technology S.A. does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

129. Square, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

130. Strava, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

131. Stripe, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

132. SugarCRM has no parent corporation and no publicly held corporation owns 10% or more of its stock.

133. Sunrun, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

134. SurveyMonkey Inc.'s parent corporation is SVMK Inc. and no publicly held corporation owns 10% or more of its stock.

135. TaskRabbit, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

136. Tech:NYC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

137. Tesla, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

138. Thumbtack, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

139. TransferWise Inc.'s parent corporation is TransferWise Ltd., and no publicly held corporation owns 10% or more of its stock.

140. TripAdvisor, Inc. has no parent corporation and the following publicly held corporation owns 10% or more of its stock: Liberty TripAdvisor Holdings, Inc.

141. Tumblr's parent corporation is Yahoo! Inc., and the following publicly held corporation owns 10% or more of its stock: Yahoo! Inc.

142. Turbonomic, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

143. Turn Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

144. Turo Inc. has no parent corporation and no publicly help corp owns 10% or more of its stock.

145. Twilio Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

146. Twitter Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

147. Uber Technologies, Inc. has no parent entity and no publicly held corporation holds 10% or more of its stock.

148. Udacity, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

149. Udemy, Incorporated has no parent corporation and no publicly held corporation owns 10% or more of its stock.

150. Upwork has no parent corporation and no publicly held corporation owns 10% or more of its stock.

151. Via Transportation, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

152. Wikimedia Foundation, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

153. WorkAndCo International Inc d/b/a Work & Co has no parent corporation and no publicly held corporation owns 10% or more of its stock.

154. Workday has no parent corporation and no publicly held corporation holds 10% or more of its stock.

155. Y Combinator Management, LLC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

156. Yahoo! Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

157. Yelp Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

158. Yext, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

159. Zendesk, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

160. ZenPayroll, Inc. d/b/a Gusto has no parent corporation and no publicly held corporation owns 10% or more of its stock.

161. Zymergen Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

162. Zynga Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.